IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1292 OF 2004
Along with
Civil Application No.1731 of 2004

Smt Savitrabai w/o Karbhari Khairnar, Appellant
Vs
Sudhkar Abaji Khairnar and ors. Respondents

WITH

SECOND APPEAL (ST) NO.18755 OF 2004
Along with
Civil Application No.1142 of 2004

Punja Abaji More, deceased through
his L.Rs
1-A.Smt. Yamunabai Punjaji More
and ors. .. Appellants.
Vs
1. Sudhakar Abaji Khairnar and ors .. Respondents.

Mr S.M.Sabrad, for the appellant.
Mr P.N.Joshi, for respondent no.2-A.

CORAM : D.B.BHOSALE,J.
DATE : 05/03/2007
PC:

1. Heard the learned counsel for the parties.

2. The concurrent findings of the courts below are under challenge in the instant appeals on three grounds: firstly, a suit was barred by limitation; secondly, the words "interest in any immovable property of an intestate" in section 22 of Hindu Succession Act do not include an agricultural land and, therefore, there

cannot be a decree in respect of the agricultural land and; thirdly, the suit for mandatory injunction simplicitor is not maintainable without there being a prayer for setting aside the sale transaction.

3. The present suit was filed by the respondents-plaintiffs for enforcement of their right under section 22(1) of Hindu Succession Act in the form of mandatory injunction directing defendant no.1 to execute a sale deed of her 1/6th undivided share in their favour, with a prayer for permanent injunction and in the alternative for possession. Admittedly, the suit property is agricultural land.

4. It appears that the plaintiffs came to know about the agreement for sale executed by appellant-defendant no.1 in favour of defendant no.2 some time in June, 1987, as stated by the plaintiffs in the plaint. That being so, the suit cannot be said to be barred by limitation. It appears that in the earlier suit, bearing Regular Civil Suit No.111 of 1984, defendant no.1, herein, had contended that she had executed an agreement of sale on 9.6 1986 in respect of her one-half share in the suit land and that is how the plaintiff herein seems to have come to know about execution of the agreement. I find no substance in the question of

limitation. Moreover, the question of limitation was neither raised in the pleadings nor before the trial Court. The question of limitation being a mixed question of law and fact, it ought to have been raised before the trial Court. Insofar as the second contention that the words "interest in any immovable property of an intestate"in section 22 do not include interest in agricultural land, is concerned, Mr Sabrad, learned counsel for the appellant, placed heavy reliance upon the judgment of the High Court of Rajasthan in Jeewanra Vs Lichmadevi and anr, AIR 1981 Rajasthan 16. This judgment was considered by the learned Single Judge of this Court in Second Appeal No.244 of 1990 and vide order dated 10/09/2003 has taken a contrary view expressing disagreement with the view of the Rajasthan High Court. The learned Single Judge has taken a view that section 22 also uses the words "immovable property" and, there is no reason to exclude agricultural land. I do not find any reason to take a different view from the one taken by the learned Single Judge in this case. In the circumstances, the second submission of the learned counsel for the appellant is also devoid of any merits. Insofar as the third contention that the suit for mandatory injunction is not maintainable is concerned, admittedly in the present case only the agreement of sale was executed and the transaction was not complete

and in view thereof it was not necessary to file a separate suit for setting aside sale transaction. The courts below have considered all these questions in proper perspective in the impugned judgments and I find no reason to interfere with the same. In the circumstances, these second appeals stand dismissed. As a consequence thereof, the civil applications for condonation of delay and stay stand disposed of.

(D.B.BHOSALE,J.)